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Proposed Attorneys for Chapter 11 Debtor  
and Debtor in Possession The Barbara A Sinatra Family Limited Partnership

**UNITED STATES BANKRUPTCY COURT**  
**CENTRAL DISTRICT OF CALIFORNIA, SANTA ANA DIVISION**

In re ) Case No. 8:14-bk-16337  
The Barbara A Sinatra Family ) Chapter 11  
Limited Partnership )  
 ) **NOTICE OF REMOVAL OF ACTION**  
 ) **TO UNITED STATES BANKRUPTCY**  
 ) **COURT**  
 )  
 ) [28 U.S.C. § 1452(a), Fed. R. Bankr. P.  
 ) 9027]  
 )  
Debtor. ) [No Hearing Required]  
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**TO THE UNITED STATES BANKRUPTCY COURT, THE OFFICE OF THE  
UNITED STATES TRUSTEE, AND PARTIES IN INTEREST:**

**PLEASE TAKE NOTICE** that, pursuant to 28 U.S.C. §§ 157(a), 157(b)(1), 157(b)  
(2), 1334 and 1452 142(a), and Rule 9027 of the Federal Rules of Bankruptcy Procedure  
(the "Bankruptcy Rules"), The Barbara A Sinatra Family Limited Partnership, the debtor



1 and debtor in possession in the above-captioned chapter 11 bankruptcy case (the  
2 "Debtor"), hereby removes to this Court the state court action described below:

3 1. On or about January 28, 2008, GRACE ROCCO, an individual; and JEFFERY R.  
4 BENNETT, Trustee of the Grace Rocco Irrevocable Qualified Domestic Trust Dated  
5 March 29, 2000 ("Plaintiffs") commenced an action in the Superior Court of the State of  
6 California in and for the County of Orange ("State Court") entitled "Rocco v. Helsing,  
7 bearing Case No. 30-2008-00101777 (the "State Court Action"). A true and correct copy  
8 of the operative Complaint in the State Court Action is attached hereto as Exhibit "A"  
9 and incorporated herein by reference.

10 2. On or about October 25, 2014, the Debtor filed a voluntary petition for relief  
11 under Chapter 11 of Title 11 of the United States Code in the Bankruptcy Court for the  
12 Central District of California, Santa Ana Division, bearing Case No. 8:11-bk- (the  
13 "Bankruptcy Case").

14 3. The State Court Action is a civil action and is not a proceeding before the  
15 United States Tax Court or a civil action by a governmental unit to enforce such  
16 governmental unit's police or regulatory power.

17 4. The State Court Action is a civil action over which this Court has jurisdiction  
18 under 28 U.S.C. §§ 157 and 1334 as it is closely related to the Bankruptcy Case presently  
19 pending before this Court. The State Court Action now removed to this Court is a core  
20 proceeding pursuant to, among other things, 28 U.S.C. §§ 157(b)(2)(A), (B) and (O),  
21 because the State Court Action directly relates to, seeks possession of, and affects  
22 property of the Debtor's estate and since the issues to be resolved in the State Court  
23 Action are unavoidably intertwined with issues concerning the administration of the  
24 Debtor's estate.

25 5. Pursuant to 28 U.S.C. § 1452(a), the State Court Action, including all claims,  
26 counter-claims and causes of action therein, is an action that may be removed to  
27 Bankruptcy Court.  
28



1 6. This Notice of Removal is proper and timely under Bankruptcy Rule 9027(a)  
2 (2) since this Notice has been filed within 90 days after the order for relief in the  
3 Bankruptcy Case.

4 **PLEASE TAKE FURTHER NOTICE** that, in accordance with Bankruptcy Rules  
5 9027(b) and (c), the Debtor will promptly file a copy of this Notice of Removal with the  
6 Clerk of the State Court and serve the appropriate notice on all parties. Removal of the  
7 State Court Action and all claims and causes of action therein will be effected upon the  
8 filing of a copy of this Notice of Removal with the Clerk of the State Court pursuant to  
9 Bankruptcy Rule 9027(c).

10 **PLEASE TAKE FURTHER NOTICE** that, unless otherwise ordered by the United  
11 States District Court, this matter is automatically referred to the United States  
12 Bankruptcy Court for the Central District of California, Santa Ana Division in  
13 accordance with Rule 9027(e) of the Federal Rules of Bankruptcy Procedure and 28  
14 U.S.C. § 157(a). The parties to the Action shall proceed no further in the State Court  
15 unless otherwise ordered by this Court.

16 Dated: October 26, 2014

**The Barbara A Sinatra Family Limited Partnership**

17  
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19  
20 By: 

21 David G. Epstein  
22 The David Epstein Law Firm  
23 Proposed Attorneys for Chapter 11 Debtor  
24 and Debtor in Possession  
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6 Attorneys for Plaintiffs GRACE ROCCO, an individual, and JEFFERY R. BENNETT,  
Trustee of the GRACE ROCCO IRREVOCABLE QUALIFIED DOMESTIC TRUST  
7 dated March 29, 2000

8 SUPERIOR COURT OF CALIFORNIA

9 COUNTY OF ORANGE - CENTRAL JUSTICE CENTER

10 GRACE ROCCO, an individual; and  
JEFFERY R. BENNETT, Trustee of the  
11 GRACE ROCCO IRREVOCABLE  
QUALIFIED DOMESTIC TRUST  
12 dated March 29, 2000,

13 Plaintiffs,

14 v.

15 MARK ALAN HELSING, an individual;  
JOHN DAVID THOMAS, an individual  
16 aka J. DAVID THOMAS aka DAVE  
THOMAS; CRESTRIDGE ESTATES,  
LLC, a California limited liability  
17 company; HLHS FINANCIAL  
SERVICES, INC., a California  
18 corporation dba SEA VIEW  
INVESTMENTS; 468 ASHTON LP, a  
19 California limited partnership; 468  
ASHTON, LLC, a California limited  
20 liability company; COLONY  
HOLDINGS, LLC, a limited liability  
21 company; THE BARBARA A. SINATRA  
FAMILY LIMITED PARTNERSHIP, a  
22 Nevada limited partnership; THE  
BARBARA A. SINATRA LLC, a  
23 California limited liability company; THE  
SINATRA FAMILY TRUST, a trust,  
24 trustees unknown; 925 ORIOLE, LLC, a  
California limited liability company;  
25 RANCHO PALOS VERDES HOLDING  
COMPANY, LLC, a California limited  
26 liability company; and DOES 1 through  
100, inclusive,

27 Defendants.  
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Case No. 30-2008-00101777  
[Assigned to Hon. Charles Margines,  
Dept. C-19]  
[Unlimited Jurisdiction]

**FIRST AMENDED COMPLAINT  
FOR:**

1. **BREACH OF FIDUCIARY DUTY**
2. **FRAUD**
3. **NEGLIGENT MISREPRESENTATION**
4. **CONSTRUCTIVE FRAUD**
5. **CONSTRUCTIVE TRUST**
6. **FRAUDULENT CONVEYANCE**
7. **CIVIL CONSPIRACY**
8. **CONVERSION**
9. **DECLARATORY RELIEF**

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1           7.       Plaintiffs are informed a believe and thereby allege that Defendant 468  
2 ASHTON LP ("Ashton LP") is a California limited partnership doing business within  
3 the County of Orange, State of California.

4           8.       Plaintiffs are informed and believe and thereby allege that Defendants 468  
5 ASHTON, LLC ("Ashton LLC") and 925 ORIOLE, LLC ("Oriole LLC") are California  
6 limited liability companies doing business within the County of Orange, State of  
7 California. Plaintiffs are further informed and believe and thereby allege that Defendant  
8 COLONY HOLDINGS, LLC ("Colony") is a limited liability company doing business  
9 within the County of Orange, State of California that is the managing member of both  
10 Ashton LLC and Oriole LLC and is otherwise an officer of Defendant THE BARBARA  
11 A. SINATRA FAMILY LIMITED PARTNERSHIP ("Sinatra LP"), a limited  
12 partnership doing business within the County of Orange, State of California.

13           9.       Plaintiffs are informed and believe and thereby allege that Defendant THE  
14 BARBARA A. SINATRA LLC ("Sinatra LLC") is a Nevada limited partnership doing  
15 business within the County of Orange, State of California, and that Defendant THE  
16 SINATRA FAMILY TRUST ("Sinatra Trust") is a Nevada trust doing business within  
17 the County of Orange, State of California. Sinatra LP, Sinatra LLC, and Sinatra Trust  
18 are collectively referred to herein as "Sinatra."

19           10.       Plaintiffs are informed and believe and thereby allege that Defendants  
20 RANCHO PALOS VERDES HOLDING COMPANY, LLC ("RPV Holding") and  
21 DOES 50 through 75, inclusive, (collectively, the "Interest Holders") are business  
22 entities of various forms as alleged otherwise herein or individuals, all of whom have a  
23 beneficial interest in the property and assets that are the subject of this suit.

24           11.       There also exists, and at all times herein mentioned there existed, a unity of  
25 interest and ownership between Thomas, Crestridge, and DOES 1 through 10, inclusive  
26 (collectively, the "Crestridge Defendants") such that any individuality and separateness

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1 between them has ceased, and the Crestridge Defendants are the alter egos of one  
2 another.

3 12. Adherence to the fiction of the separate existence of the Crestridge  
4 Defendants as distinct from one another would permit an abuse of the corporate privilege  
5 and would sanction fraud and promote injustice. Accordingly, the Court should  
6 disregard the distinctions between the Crestridge Defendants and hold each of these  
7 Defendants liable for the wrongdoing alleged herein as to the other.

8 13. There also exists, and at all times herein mentioned there existed, a unity of  
9 interest and ownership between HLHS, Sea View, Helsing, Thomas, Crestridge, RPV  
10 Holding, Colony and DOES 11 through 20, inclusive (collectively, the "Thomas  
11 Defendants") such that any individuality and separateness between them has ceased, and  
12 the Thomas Defendants are the alter egos of one another.

13 14. Adherence to the fiction of the separate existence of the Thomas  
14 Defendants as distinct from one another would permit an abuse of the corporate privilege  
15 and would sanction fraud and promote injustice. Accordingly, the Court should  
16 disregard the distinctions between the Thomas Defendants and hold each of these  
17 Defendants liable for the wrongdoing alleged herein as to the other.

18 15. There also exists, and at all times herein mentioned there existed, a unity of  
19 interest and ownership between the Thomas Defendants, Ashton LLC, Ashton LP,  
20 Oriole LLC, Colony, Sinatra LP, Sinatra LLC, Sinatra Trust, and DOES 21 through 30,  
21 inclusive (collectively the "Colony Defendants") such that any individuality and  
22 separateness between them has ceased, and the Colony Defendants, are the alter egos of  
23 one another.

24 16. Adherence to the fiction of the separate existence of the Colony  
25 Defendants as distinct from one another would permit an abuse of the corporate privilege  
26 and would sanction fraud and promote injustice. Accordingly, the Court should

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1 disregard the distinctions between the Colony Defendants and hold each of these  
2 Defendants liable for the wrongdoing alleged herein as to the other.

3 17. Plaintiffs are informed and believe and thereon allege that DOES 1  
4 through 100, inclusive, are and, at all times relevant to this First Amended Complaint,  
5 were the officers, directors, employees, partners, principals, agents, joint venturers  
6 and/or consultants of the other defendants in this action or that they are otherwise  
7 responsible in some manner for the acts, occurrences, and conduct alleged herein and  
8 that they proximately caused plaintiffs' damages as alleged herein.

9 18. Plaintiffs are ignorant of the true identities and capacities of the defendants  
10 sued herein as DOES 1 through 100, inclusive, and they therefore sue such defendants by  
11 their fictitious names. Plaintiffs will seek leave of court to amend this First Amended  
12 Complaint to allege the true identities and capacities of these defendants when the same  
13 has been ascertained.

14 19. This suit concerns conveyances and other events pertaining to certain real  
15 property, described as follows:

- 16 • Lot 31, 32 and 33 in Block "K", Arch Beach Heights  
17 Addition, as shown on a map recorded in Book 7, Page 22 of  
18 Miscellaneous Maps, Records of Orange County, California,  
19 and more particularly described as 468 Ashton in the City of  
20 Laguna Beach, County of Orange, State of California (the  
21 "Ashton Property").
- 22 • That portion of the northeast quarter of Section 25, Township  
23 7 South, Range 9 West, San Bernardino Meridian, according  
24 to the official plat filed in the district land office August 13,  
25 1875, described as follows: Beginning at the corner common  
26 to sections 19, 24, 25 and 30, in said Township 7 South,  
27 Ranges 8 and 9 West, the northwest corner of said Section



1 being shown on the map of Tract No. 1038 recorded in Book  
2 34, Page 3 of miscellaneous maps, records of Orange  
3 County, California; thence south 0°03'42" west 998.62 feet  
4 along the east line of said Section 25; thence south 69°23'  
5 west 325.00 feet to the true point of beginning; thence,  
6 continuing south 69 degrees 23' west 238.00 feet; thence  
7 south 0°03'42" west 426.13 feet to the northerly line of Tract  
8 No. 1252 as shown on a map recorded in Book 38, Pages 15  
9 and 16 of said miscellaneous maps; thence south 15°41'55"  
10 west 128.68 feet; thence south 3°45'40" east 15.00 feet;  
11 thence, leaving said Tract No. 1252, north 83°16'50" east  
12 35.22 feet; thence north 84°14'20" east 135.25 feet; thence  
13 north 0°03'42" east 670.13 feet to the true point of  
14 beginning.

15 Excepting any portion thereof lying within the boundaries of  
16 Tract No. 2218 as shown on a map recorded in Book 85,  
17 Pages 30 and 31 of said miscellaneous maps.

18 More particularly described as 925 Oriole in the City of  
19 Laguna Beach, County of Orange, State of California (the  
20 "Oriole Property").

- 21 • Parcel 1 of Parcel Map No. 25271, in the City of Rancho  
22 Palos Verdes, County of Los Angeles, State of California, as  
23 per the map filed in Book 288 Pages 44 and 45 of Parcel  
24 Maps, in the Office of the County Recorder of Said County  
25 (the "Crestridge Property").

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## **First Cause of Action**

### **(Breach of Fiduciary Duty Against the Thomas Defendants and DOES 31 through 40, Inclusive)**

20. Plaintiffs incorporate each preceding paragraph of this First Amended Complaint as though fully set forth herein.

21. Plaintiff Bennett and Defendant Helsing were childhood friends, and Bennett and Rocco were investors in the transactions related to the Ashton Property and Oriole Property described herein, which was controlled and operated by the Thomas Defendants and DOES 31 through 40, inclusive. At all pertinent times herein, the Thomas Defendants were fiduciaries to Bennett, Rocco and the Rocco Trust.

22. Beginning on or about September 7, 2000 and continuing into 2006, at Helsing's request, Plaintiffs made substantial loans that were to be secured by Deeds of Trust on the Ashton Property, Oriole Property, Crestridge Property and, in some cases, the personal guaranty of Sinatra. Throughout this time, said Defendants assured Plaintiffs not only that the loans would be repaid, but that Plaintiffs would hold a security interest in those properties for the full value of the loans.

23. Within the last year, Plaintiffs discovered that said Defendants rendered the deeds of trust valueless by, *inter alia*, failing to record those Deeds of Trust, assigning those Deeds of Trust without the permission of Plaintiffs, borrowing funds from others and providing them with security positions in the Ashton Property, Oriole Property, and/or Crestridge Property senior to Plaintiffs' position without Plaintiffs' knowledge or consent, transferring the Ashton Property from Ashton LLC to Helsing individually in March 2006 without satisfying Plaintiffs' Deeds of Trust or obtaining Plaintiffs' consent, and transferring the Oriole Property to other parties without satisfying Plaintiffs' Deeds of Trust or obtaining Plaintiffs' consent. As a result of these actions, Plaintiffs have not only been deprived of repayment of their loans, but they have

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1 been deprived of the security against the Ashton Property, Oriole Property, and/or  
2 Crestridge Property they had been promised.

3 24. In that the Thomas Defendants were in a fiduciary relationship with  
4 Plaintiffs, said Defendants owed a fiduciary duty to Plaintiffs to act in the highest good  
5 faith as to Plaintiffs and were not permitted to obtain any advantage over them by the  
6 slightest misrepresentation or concealment.

7 25. Plaintiffs are informed and believe and based upon such information and  
8 belief allege that the Defendants named within this cause of action breached their  
9 respective fiduciary duties, all to the harm of Plaintiffs, by their actions described herein.

10 26. As a direct and proximate result of the wrongful acts of said Defendants  
11 herein, Plaintiffs have sustained economic damages, in an amount to be proven at the  
12 time of trial.

13 27. Plaintiffs are informed and believe and thereon allege that in doing the acts  
14 alleged above, said Defendants acted with malice, oppression and the intent to harm  
15 Plaintiffs, and Plaintiffs are entitled to recover punitive and exemplary damages in an  
16 amount to be proved at trial.

## 17 18 **Second Cause of Action**

19 **(Fraud Against the Thomas Defendants and DOES 31 through 40, Inclusive)**

20 28. Plaintiffs incorporate each preceding paragraph of this First Amended  
21 Complaint as though fully set forth herein.

22 29. As alleged above, beginning in September 2000 and for years thereafter,  
23 said Defendants requested loans from Plaintiffs, assuring them that these loans would be  
24 fully secured by Deed of Trust on the Ashton Property, the Oriole Property, and/or the  
25 Crestridge Property. In reliance upon said Defendants' statements and promises  
26 concerning this security, Plaintiffs made several substantial loans at said Defendants'  
27 request.

30. When they made the statements and promises referenced above to Plaintiffs, said Defendants knew those statements and promises to be in fact false, that said Defendants had no intention of securing the loans with those properties, and said promises were made with the intent to deceive Plaintiffs.

31. As explained in the preceding paragraphs, incorporated by reference within this cause of action, Plaintiffs were ignorant of the falsity of said Defendants' promises and statements and believed them to be true at that time they were made. Plaintiffs could not, in the exercise of reasonable diligence, have discovered said Defendants' secret intentions prior to their recent discovery of the true facts. Had Plaintiffs known of these secret intentions, Plaintiffs would not have relied upon said Defendants' promises and statements and would not have contributed their funds. Plaintiffs did not discover said Defendants' fraud until 2007.

3 32. As a direct and proximate result of said Defendants' fraud as alleged  
4 herein, Plaintiffs have suffered general and special damages according to proof at trial in  
5 an amount well in excess of this court's jurisdictional minimum.

33. At all relevant times, said Defendants' fraudulent actions, as described herein, were willful, intentional, malicious and were carried out with a conscious, willful and reckless disregard of Plaintiffs' rights such that Plaintiffs are accordingly entitled to an award of exemplary damages under California Civil Code Section 3294, et seq., in an amount sufficient to punish said Defendants and to set an example in view of said Defendants' respective financial conditions, according to proof at trial.

### Third Cause of Action

(Negligent Misrepresentation Against the Thomas Defendants and DOES 31  
through 40, Inclusive)

34. Plaintiffs incorporate each preceding paragraph of this First Amended  
Complaint as though fully set forth herein.

1           35. As alleged above, beginning in September 2000 and for years thereafter,  
2 said Defendants requested loans from Plaintiffs, assuring them that these loans would be  
3 fully secured by Deed of Trust on the Ashton Property, the Oriole Property, and/or the  
4 Crestridge Property. In reliance upon said Defendants' statements and promises  
5 concerning this security, Plaintiffs made several substantial loans at said Defendants'  
6 request.

7           36. When they made the statements and promises referenced above to  
8 Plaintiffs, said Defendants had no basis to believe that those statements and promises  
9 were in fact true.

10           37. As explained in the preceding paragraphs, incorporated by reference within  
11 this cause of action, Plaintiffs were ignorant of the falsity of said Defendants' promises  
12 and statements and believed them to be true at that time they were made. Plaintiffs could  
13 not, in the exercise of reasonable diligence, have discovered the falsity of said promises  
14 and statements prior to their recent discovery of the true facts. Had Plaintiffs known of  
15 the falsity of said promises and statements, Plaintiffs would not have relied upon said  
16 Defendants' promises and statements and would not have contributed their funds.  
17 Plaintiffs did not make this discovery until 2007.

18           38. As a direct and proximate result of said Defendants' negligent  
19 misrepresentations as alleged herein, Plaintiffs have suffered general and special  
20 damages according to proof at trial in an amount well in excess of this court's  
21 jurisdictional minimum.

## 22 23                                   **Fourth Cause of Action**

24           **(Constructive Fraud Against the Thomas Defendants and DOES 31 through 40,**  
25                                   **Inclusive)**

26           39. Plaintiffs incorporate each preceding paragraph of this First Amended  
27 Complaint as though fully set forth herein.

41. As set forth above, said Defendants, and each of them, breached the aforesaid duty by their acts, omissions and concealments with the intent to deceive Plaintiffs. As a direct and proximate result of the above-mentioned wrongful acts, omissions and concealments by said Defendants, Plaintiffs have suffered financial and other injuries in a sum to be proved at trial.

42. At all relevant times, said Defendants' actions, as described herein, were willful, intentional, malicious and were carried out with a conscious, willful and reckless disregard of Plaintiffs' rights such that Plaintiffs are accordingly entitled to an award of exemplary damages under California Civil Code Section 3294, et seq., in an amount sufficient to punish said Defendants and to set an example in view of said Defendants' respective financial conditions, according to proof at trial.

**(Constructive Trust Against All Defendants)**

44. Defendants are in the possession, custody and/or control of the Ashton Property, the Oriole Property, and/or the Crestridge Property, hold an interest in the Ashton Property, the Oriole Property, and/or the Crestridge Property, and/or are in possession of or received the benefit from assets provided by Plaintiffs.

45. Said defendants acquired their respective interests in those properties and/or the assets of Plaintiffs by virtue of the fraud, breach of fiduciary duty, and other wrongful acts perpetrated against Plaintiffs as alleged herein.

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47. The keeping of the property and/or assets by Defendants would constitute unjust enrichment.

**(Fraudulent Conveyance Against All Defendants)**

49. The Thomas Defendants and DOES 31 through 40, inclusive, as alleged above, made transfers of security interests and transfers of Plaintiffs' assets and interest in the Ashton Property and/or the Crestridge Property to some or all of the other Defendants in this action without Plaintiffs' knowledge or consent. Pursuant to California Civil Code section 3439.04, Plaintiffs are informed and believe and thereby allege that the Thomas Defendants and DOES 31 through 40, inclusive were made with the actual intent to hinder, delay, or defraud Plaintiffs, without receiving a reasonably equivalent value in exchange for the transfers, and the Thomas Defendants and DOES 31 through 40, inclusive were either engaged or about to engage in a business or a transaction for which the remaining assets of those defendants were unreasonably small in relation to the business or transaction, or intended to incur, or believed or reasonably should have believed that they would incur, debts beyond their ability to pay as they became due.

50. The Defendants named in this cause of action, and each of them, were the recipients of interests in the Ashton Property and/or the Crestridge Property and/or assets of Plaintiffs as a result of these fraudulent conveyances by the Thomas Defendants and DOES 31 through 40, inclusive.

1           51.       Plaintiffs request that, pursuant to California Civil Code section 3439.07,  
2       the Court order the fraudulent conveyances avoided to the extent necessary to satisfy  
3       Plaintiffs' claims, issue an injunction against the further transfer or encumbrance of the  
4       Ashton Property, Crestridge Property, and Plaintiffs' assets, appoint a receiver to take  
5       charge of the Ashton Property and Crestridge Property, and provide any other relief,  
6       including but not limited to monetary damages, that the Court deems justified to restore  
7       to Plaintiffs their security interests and assets.

9 **Seventh Cause of Action**

10 (Civil Conspiracy Against the Thomas Defendants and DOES 31 through 40,  
11 Inclusive)

52. Plaintiffs incorporate each preceding paragraph of this First Amended  
Complaint as though fully set forth herein.

14 53. As alleged above, beginning in September 2000 and for years thereafter,  
15 said Defendants made false and misleading statements to Plaintiffs, inducing them to  
16 provide assets to and/or for the benefit of said Defendants assuring them that these loans  
17 would be fully secured by Deed of Trust on the Ashton Property, the Oriole Property,  
18 and/or the Crestridge Property. Plaintiffs relied upon said Defendants' statements and  
19 promises concerning this security, making several substantial loans at said Defendants'  
20 request that were both unpaid and, unbeknownst to Plaintiffs, unsecured. Said  
21 Defendants also engaged in other wrongful conduct, such as, *inter alia*, failing to record  
22 those Deeds of Trust, assigning those Deeds of Trust without the permission of  
23 Plaintiffs, borrowing funds from others and providing them with security positions in the  
24 Ashton Property, the Oriole Property, and/or the Crestridge Property senior to Plaintiffs'  
25 position without Plaintiffs' knowledge or consent, transferring the Ashton Property from  
26 Ashton LLC to Helsing individually in March 2006 without satisfying Plaintiffs' Deeds  
27 of Trust or obtaining Plaintiffs' consent, transferring the Oriole Property to other parties



1 without satisfying Plaintiffs' Deeds of Trust or obtaining Plaintiffs' consent, and  
2 otherwise engaging in the manipulation of Plaintiffs.

3 54. Plaintiffs are informed and believe and thereon allege that, in taking the  
4 actions described above, said Defendants did so in conspiracy with one another for the  
5 purposes of defrauding and/or misleading Plaintiffs into providing assets to and/or for  
6 the benefit of said Defendants.

7 55. As a direct and proximate result of said Defendants' conspiracy – which is  
8 ongoing – as alleged herein, Plaintiffs have suffered general and special damages  
9 according to proof at trial in an amount well in excess of this court's jurisdictional  
10 minimum.

11 56. At all relevant times, said Defendants' actions, as described herein, were  
12 willful, intentional, malicious and were carried out with a conscious, willful and reckless  
13 disregard of Plaintiffs' rights such that Plaintiffs are accordingly entitled to an award of  
14 exemplary damages under California Civil Code Section 3294, et seq., in an amount  
15 sufficient to punish said Defendants and to set an example in view of said Defendants'  
16 respective financial conditions, according to proof at trial.

## 17 18 **Eighth Cause of Action**

19 **(Conversion Against the Thomas Defendants and DOES 31 through 40, Inclusive)**

20 57. Plaintiffs incorporate each preceding paragraph of this First Amended  
21 Complaint as though fully set forth herein.

22 58. As alleged above, beginning in September 2000 and for years thereafter,  
23 said Defendants requested loans from Plaintiffs, assuring them that these loans would be  
24 fully secured by Deed of Trust on the Ashton Property, the Oriole Property, and/or the  
25 Crestridge Property. In reliance upon said Defendants' statements and promises  
26 concerning this security, Plaintiffs made several substantial loans at said Defendants'  
27 request.

1           59. By their acts and omissions in obtaining and refusing to return Plaintiffs'  
2 assets, said Defendants exercised wrongful dominion and control over the property of  
3 Plaintiffs, thus committing conversion.

4           60. As a direct and proximate result of said Defendants' misappropriation of  
5 Plaintiffs' assets, Plaintiffs have suffered general and special damages according to  
6 proof at trial in an amount well in excess of this court's jurisdictional minimum.

7           61. At all relevant times, said Defendants' actions, as described herein, were  
8 willful, intentional, malicious and were carried out with a conscious, willful and reckless  
9 disregard of Plaintiffs' rights such that Plaintiffs are accordingly entitled to an award of  
10 exemplary damages under California Civil Code Section 3294, et seq., in an amount  
11 sufficient to punish said Defendants and to set an example in view of said Defendants'  
12 respective financial conditions, according to proof at trial.

## 13 14                                   **Ninth Cause of Action**

15           **(Declaratory Relief Against Helsing, DOES 76 through 85, inclusive, and**  
16           **DOE SURETY COMPANIES 41 through 50, inclusive)**

17           62. Plaintiffs incorporate each preceding paragraph of this First Amended  
18 Complaint as though fully set forth herein.

19           63. An actual controversy exists between Plaintiffs on the one hand, and  
20 Helsing, DOES 76 through 85, inclusive, and DOE SURETY COMPANIES 51 through  
21 100, inclusive, and each of them, whereby Plaintiffs contends that the surety bonds  
22 and/or other bonds ensuring the faithful performance of Helsing and DOES 76 through  
23 85, inclusive, are valid and binding as against these defendants, and each of them.  
24 Plaintiffs also contends that Plaintiffs are entitled to recover against these bonds for any  
25 damages Plaintiffs incurred based on the alleged defaults by Helsing and DOES 76  
26 through 85 in the performance ensured by these bonds.

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1           64.     Plaintiffs are informed and believes and upon such information and belief  
2 allege that these defendants, and each of them, deny that the aforementioned bonds are  
3 valid and binding as against these defendants, and each of them, and/or deny that  
4 Plaintiffs are entitled to recover against these bonds for any damages Plaintiffs incurred  
5 based on the alleged defaults by Helsing and DOES 76 through 85 in the performance  
6 ensured by these bonds.

7           65.     Plaintiffs hereby pray for a declaration that the surety bonds and/or other  
8 bonds ensuring the faithful performance of Helsing and DOES 76 through 85, inclusive,  
9 are valid and binding as against these defendants, and each of them, and that Plaintiffs  
10 are entitled to recover against these bonds for any damages Plaintiffs incurred based on  
11 the alleged defaults by Helsing and DOES 76 through 85 in the performance ensured by  
12 these bonds.

13  
14           **WHEREFORE**, Plaintiff prays judgment against Defendants as follows:

15           For the First, Second, Fourth, Seventh, and Eighth Causes of Action:

- 16           1.     For actual damages, in an amount to be proven at the time of trial.  
17           2.     For punitive and exemplary damages in an amount to be proved at trial.

18           For the Third Cause of Action:

- 19           3.     For actual damages, in an amount to be proven at the time of trial.

20           For the Fifth Cause of Action:

- 21           4.     For the Court to impose a constructive trust over the Property and the  
22 assets Plaintiffs contributed at the request of the Thomas Defendants and DOES 31  
23 through 40, inclusive.

24           For the Sixth Cause of Action:

- 25           5.     For an order avoiding the fraudulent conveyances to the extent necessary to  
26 satisfy Plaintiffs' claims.

27           ///

1           6.     For an injunction against the further transfer or encumbrance of the Ashton  
2 Property and Plaintiffs' assets.

3           7.     For an order appointing a receiver to take charge of the Ashton Property.

4           8.     For any other relief, including but not limited to monetary relief, that the  
5 Court deems justified to restore to Plaintiffs their security interests and assets.

6           For the Ninth Cause of Action:

7           9.     For a declaration that the surety bonds and/or other bonds ensuring the  
8 faithful performance of Helsing and DOES 76 through 85, inclusive, are valid and  
9 binding as against these defendants, and each of them, and that Plaintiffs are entitled to  
10 recover against these bonds for any damages Plaintiffs incurred based on the alleged  
11 defaults by Helsing and DOES 76 through 85 in the performance ensured by these bonds.


12           For All Causes of Action:

13          10.    For the recovery of costs expended in bringing this action.

14          11.    For such other and further relief as this Court deems just.

15                   BARNES, CROSBY, FITZGERALD  
16                   & ZEMAN LLP

17 Dated: November 25, 2008

18                     
19                   Michael J. Fitzgerald  
20                   Eric P. Francisconi  
21                   David M. Lawrence  
22                   Attorneys for Plaintiffs  
23  
24  
25  
26  
27  
28

**PROOF OF SERVICE**

STATE OF CALIFORNIA, COUNTY OF ORANGE

I, the undersigned, am employed in the aforesaid county, State of California. I am over the age of 18 years and not a party to the within action. My business address is 18101 Von Karman Avenue, Suite 120, Irvine, California.

On November 25, 2008, I served the foregoing:

**FIRST AMENDED COMPLAINT FOR:**

1. **BREACH OF FIDUCIARY DUTY**
2. **FRAUD**
3. **NEGLIGENT MISREPRESENTATION**
4. **CONSTRUCTIVE FRAUD**
5. **CONSTRUCTIVE TRUST**
6. **FRAUDULENT**
7. **CIVIL CONSPIRACY**
8. **CONVERSION**
9. **DECLARATORY RELIEF**

on interested parties in this action by [X] placing a true copy [ ] the original thereof enclosed in a sealed envelope, first class postage prepaid, addressed as follows:

Jay M. Spillane, Esq.  
Raphael Cung, Esq.  
SPILLANE, SCHAEFFER, ARONOFF,  
BANDLOW, LLP  
1880 Century Park East, Suite 1004  
Los Angeles, California 90067-2627  
Tel: (310) 229-9300  
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Mark Helsing, President in pro per  
2478 Sunningdale Drive,  
Tustin, CA 92782  
(714) 669-4747

*(In pro per for Defendant HLHS)*

*(Attorneys for Defendants JOHN DAVID  
THOMAS, an individual, aka J. DAVID  
THOMAS and CRESTRIDGE  
ESTATES, LLC)*

[X] **(BY MAIL)** I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Irvine, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

[X] **(STATE)** I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on November 25, 2008, at Irvine, California.

  
Jaclyn Rodriguez